

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JERSEY MIKE’S FRANCHISE SYSTEMS, INC.,

Plaintiff,

Case No.: 23-CV-03444-GC-TJB

v.

Judge Tonianne J. Bongiovanni

AMERICAN ARBITRATION ASSOCIATION,
INC., OPHELIA AUGUSTINE, CECELIA LAHR,
and ALEXANDER LUCE,

Defendants.

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO ASSESS COSTS FOR FAILURE TO WAIVE SERVICE OF PROCESS**

Plaintiff Jersey Mike’s Franchising Systems, Inc. (“Plaintiff”), by and through undersigned counsel, hereby moves pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure (“Rules”) for the entry of an order assessing costs against Defendants Ophelia Augustine and Cecelia Lahr (collectively, “Defendants”).

1. On June 26, 2023, Plaintiff commenced the instant action. *See* Decl. of Seth M. Shapiro, Esq., ¶ 4 (Sept. 14, 2023) (“Shapiro Decl.”).
2. On June 29, 2023, Plaintiff sent Defendants a Notice of Lawsuit and Request for Waiver of Service of Process pursuant to Rule 4(d). Defendants acknowledged receipt thereof on June 29, 2023 via e-mail. *See id.* ¶ 5 & Ex. A.
3. On July 12, 2023, Defendants refused to waive service. *See id.*, Ex. A at 1–3.
4. Accordingly, Plaintiff was required to engage a process server to personally serve Defendants with process. Following execution of personal service of process on Defendants, Plaintiff filed the Affidavit of Service with the Court. *See id.* ¶ 7; ECF Nos. 5–6.
5. Due to Defendants’ failure to agree to waive service, Plaintiff unnecessarily

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incurred the costs for effecting formal service upon Defendants and preparing this motion. *See* Shapiro Decl. ¶ 8.

6. Rule 4(d)(2) states that, if a defendant refuses to waive service, as is the case here, “the court *must* impose” on that defendant (A) “the expenses later incurred in making service” and (B) “the reasonable expenses, including attorney’s fees, of any motion required to collect those service expenses.”

7. The total costs incurred for effecting formal service upon the two Defendants are one hundred eighty dollars (\$180.00). *See* Shapiro Decl. ¶ 9 & Ex. B.

8. Plaintiff has incurred a total of \$2,585.00 in reasonable attorney’s fees based on the hours and rates of the timekeepers specified below:

a. Seth M. Shapiro, Esq., Senior Attorney, a licensed attorney since March 2015: \$600.00 per hour for 2.14 hours, totaling \$1,284.00;

b. Anité Coro, Senior Paralegal, a paralegal since 2018 and a Florida Registered Paralegal since 2023: \$175.00 per hour for 2 hours, totaling \$350.00;

c. Robert M. Einhorn, Esq., Managing Partner, a licensed attorney since 1990: \$795 per hour for 0.2 hours, totaling \$159.00; and

d. Michael M. DiCicco, Esq., a Partner, a licensed attorney since 1983: \$495 per hour for 1.6 hours, totaling \$792.00. *See id.* ¶ 10 & Ex. C; Decl. of Michael M. DiCicco, Esq. ¶ 4 & Ex. A (Sept. 15, 2023).

9. Plaintiff’s counsel attempted to meet and confer with counsel for Defendants via e-mail on multiple occasions (including on June 29, 2023 and July 12, 2023) regarding the relief sought herein. Counsel for Defendants responded to those attempts to resolve or narrow the issue with a “Shrug” emoji. *See* Shapiro Decl. ¶ 11 & Ex. A at 2.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order:

(i) granting this motion in full; (ii) ordering Defendants Ophelia Augustine and Cecelia Lahr to pay Plaintiff \$2,765.00 representing \$180.00 in costs and \$2,585.00 in reasonable fees incurred by Plaintiff to personally serve those Defendants and prepare this motion; and (iii) granting such other and further relief as this Honorable Court deems just and proper.

Dated: September 15, 2023

Respectfully submitted,

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